

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING
JUDGE JOHN D. HARRIS,

No. 173.

NOTICE OF
FORMAL PROCEEDINGS

To John D. Harris, a judge of the Los Angeles County Municipal Court from October 29, 1984 to June 2, 1998, and of the Los Angeles County Superior Court from June 2, 1998 to the present:

Preliminary investigation pursuant to Rules of the Commission on Judicial Performance, rules 109 and 111, having been made, the Commission on Judicial Performance has concluded that formal proceedings should be instituted to inquire into the charges specified against you herein.

By the following allegations, you are charged with willful misconduct in office, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, and improper action within the meaning of article VI, section 18 of the California Constitution providing for removal, censure, or public or private admonishment of a judge or former judge, to wit:

COUNT ONE

In two sexual assault trials over which you presided, you met in chambers with the victims immediately after imposing sentence on the defendants as described below. During these meetings, you complimented the victims and attempted to establish a personal relationship with them.

Your conduct gave the appearance that you were and had been biased in favor of the victims and/or the prosecution, and your communications with the victims were ex parte. Your conduct violated the Code of Judicial Ethics, canons 1, 2A and 3B(7).

A. In June and July 2000, you presided over the felony sexual assault trial of *People v. Tellez* (Los Angeles Superior Court case number BA199915). During the presentation of evidence, you called the attorneys to the bench and suggested that you meet privately with the victim to commend her courage in testifying. The defense counsel objected, and you did not meet with the victim at that time. On July 28, 2000, immediately after the sentencing hearing, without notifying defense counsel, you initiated a meeting in chambers with the sixteen-year-old victim. You invited the deputy district attorney who had tried the case to attend the meeting, but he chose not to attend. During the meeting with the victim, you commended her bravery, told her that her testimony was completely believable, told her that you could be part of her family, and stated words to the effect of, "I could be your grandfather." You also offered to give her a letter of recommendation when she applied for college.

As a result of your meeting with the victim, the Court of Appeal issued a writ of habeas corpus vacating the sentence you had imposed and remanding the case for resentencing before a different judge.

B. In August and September 2000, you presided over the felony sexual assault trial of *People v. Lopez* (Los Angeles County Superior Court case number BA196885). On September 7, 2000, immediately after the sentencing hearing, without notifying defense counsel, you initiated a meeting in chambers with the

adult victim. During the meeting, which was attended by the deputy district attorney who had tried the case, you complimented the victim on the eloquence of her remarks at the sentencing hearing, told her to call you if she needed to talk with someone, and invited her to have dinner with your family during the upcoming holidays. When the victim later called you to accept this invitation, you suggested that just the two of you have dinner at a restaurant instead; the victim first accepted the restaurant invitation, but later canceled.

COUNT TWO

From approximately October 2002 through October 2003, you engaged in a pattern of misconduct by making inappropriate comments to attorneys, jurors, and court staff with whom you dealt in your official capacity.

Your conduct violated the Code of Judicial Ethics, canons 1, 2A, 3B(4) and 3B(5).

A. In approximately October 2002, you asked Deputy Public Defender Obe Ozobu to go out to lunch with you; she declined the invitation. In December 2002, you asked Ms. Ozobu to come into your chambers so that you could show her a legal newspaper in which her name appeared. While in chambers, you showed her a Macy's department store advertisement in another newspaper and asked her to go to Macy's with you to look at a leather jacket, pictured in the advertisement, that you were thinking of buying. You said that the two of you could have lunch together, in addition to shopping. Ms. Ozobu declined. Later that day, while in chambers discussing a possible disposition in one of Ms. Ozobu's cases, you made a statement to the effect that she should resolve the case so that the two of you could go to Macy's. Later the same day, after the case was resolved, you said in open court, "Great, now we can go to Macy's," or words to that effect. Ms. Ozobu declined, saying that she had work to do.

B. On January 28, 2003, you were assigned to the Central Arraignment Courthouse to work temporarily in division 82. You arrived during the lunch hour.

Division Chief Bettina Rodriguez, who had just returned from walking during her lunch break and was dressed in bicycle shorts, a tee-shirt, and tennis shoes, saw you talking in a court hallway with Commissioner Kristi Lousteau. Ms. Rodriguez introduced herself to you, showed you the chambers for department 82, asked if there was anything else you needed, and thanked you for coming to assist. She also apologized for her attire, and explained that she had been out walking. You walked behind Ms. Rodriguez, looked at her buttocks, and said words to the effect of, "It looks good to me." You then placed both your hands on the sides of her face and said words to the effect of, "You're so cute." Later that day, you again encountered Ms. Rodriguez, who had changed into her professional clothing. You made a comment to the effect of, "You look even better now."

C. On February 4, 2003, during jury selection in *People v. Sao* (Los Angeles Superior Court case number 2CR10835) in which the defendant was alleged to have followed, grabbed, and exposed himself to two young women, the deputy city attorney asked prospective jurors whether anyone had "made a pass at" them that they "were uncomfortable with." After three female prospective jurors responded to this question, the prosecutor said, "Anybody else here care to share their feelings? Any of the gentlemen? Has there been a woman that made a pass at you and react [sic] in anger? [Name withheld] is giggling." You then interjected: "Did some woman make a pass at you and get you angry? I've been waiting for that to happen to myself."

D. In approximately March 2003, Deputy Public Defender Glendy Ruiz appeared before you for jury trial in the case of *People v. del Corral* (Los Angeles Superior Court case number 3CR00003). Before trial began, there was a discussion in chambers about possible disposition of the case. During this discussion, you said to Ms. Ruiz words to the effect of, "The defendant only wants to go to trial so that he can spend three days with you."

E. Between October 2002 and April 2003, you made inappropriate comments about defendants appearing before you in prostitution cases. In one case,

a defendant appeared before you who had a “pelvic disorder.” After the defendant left the courtroom, you discussed her medical condition in open court and made a comment to the effect of, “Caveat emptor.” In another case, after the defendant had left the courtroom, you said to counsel in open court words to the effect of, “She would look okay if she had her teeth straightened.”

F. In March 2003, you presided over the jury trial of *People v. Armando Alvarez* (Los Angeles Superior Court case number 3CR04253). Upon completion of jury selection, you thanked counsel at side bar for not exercising a challenge against a female juror whom you considered attractive, saying words to the effect of, “A judge has to have something to look at during trial.”

G. On April 10, 2003, you met privately with Deputy Alternate Public Defender Jean Costanza, in response to her request for clarification of a protective order that had been issued in *People v. Watson* (Los Angeles Superior Court case number 2CR12753). After concluding discussion of the order, you complimented Ms. Costanza on her attention to detail as an attorney and asked where she had gone to school. You then asked her if she was married and what her husband did for a living. You said that you did not know whether the alternate public defender’s office had a policy against this, but you would like to get better acquainted with her and take her to lunch. Ms. Costanza said that she would be in trial “from now until forever.” You responded with words to the effect of, “You eat lunch when you’re in trial, right?” Ms. Costanza replied that she just ate peanuts when she was in trial. You said that you were not going to ask a colleague of Ms. Costanza’s whether she was really in trial. You then said words to the effect of, “The ball is in your court, all you have to do is pick a day and I will pick a restaurant and drive you there myself.”

H. On or about October 21, 2003, at the weapons screening area of the South Gate Superior Courthouse, you approached two female security officers, Jacqueline Medina and Stephanie Dent. In their presence, you placed your hands against the wall and said words to the effect of, “Search me!” and “Can I choose

between the two of you?” You then said to Officer Medina words to the effect of “Let’s go to chambers so you can search me.” This incident occurred after you had twice been counseled by supervising judges about your inappropriate conduct towards women. At the time of this incident, you knew that you were under investigation by the Commission on Judicial Performance for the conduct that is now charged in count two (A-G).

COUNT THREE

On October 28, 2002, Deputy City Attorney Chadd Kim appeared before you in the case of *People v. Castillo* (Los Angeles Superior Court case number 2CR02465). You repeatedly asked her to identify herself and the unit for which she worked, and to justify her position on the case. As Ms. Kim approached the bench to help you find the complaint in the court file, you threw the file in her direction. Ms. Kim picked it up from the floor and showed you the complaint. You continued to be abrupt and impatient with Ms. Kim during the remainder of the appearance.

On February 5, 2003, Ms. Kim appeared before you in the case of *People v. Charles Bolden* (Los Angeles Superior Court case number 2CR13235) in which there was a proposed disposition. You questioned Ms. Kim in a hostile and insistent manner regarding the disposition. At one point, regarding a provision that some seized cigarettes be forfeited, you asked, “Do you plan on smoking them yourself?”

When Ms. Kim was assigned to your department in a third matter, *People v. Bautista* (Los Angeles Superior Court case number 2CR02345), on February 20, 2003, she filed a peremptory challenge pursuant to Code of Civil Procedure section 170.6. You responded, “How come I have a calendar every day in which the prosecution handles cases?” Ms. Kim asked if you wished for her to make a record; you replied, “If you wish.” Ms. Kim asked if the court was inquiring; you responded, “Yes. I think I asked you twice.” Ms. Kim then set forth her recollection of the events in the *Castillo* and *Bolden* cases, described above. You

then said you believed there was “good cause” to transfer the case to another department.

On February 20, 2003, when another deputy city attorney appeared before you in *People v. Stephen Hawkins* (Los Angeles Superior Court case number 2CR 11885) you said to that deputy city attorney, while Ms. Kim was still present in the courtroom, “Would you like to join your colleague in filing some paper?” When the attorney asked what filing you meant, you responded, “Affidavit of prejudice. I didn’t throw any files against you or near you or towards you?” When the attorney replied “No,” you said, “I try to be selective when I throw things.”

Your conduct was not patient, dignified or courteous and your reaction to the filing of the peremptory challenge was improper. Your conduct violated the Code of Judicial Ethics, canons 1, 2A and 3B(4).

COUNT FOUR

Between October 2002 and April 2003, you had frequent conversations in chambers with Deputy City Attorney Matthew Schonbrun, who was then regularly appearing before you. The two of you discussed various topics, including Mr. Schonbrun’s social life. Mr. Schonbrun asked if you knew any single women and if you could “fix him up” with anyone you knew, or words to that effect. Over the next several months, you contacted friends who were the parents of single daughters to see if their daughters would like to meet Mr. Schonbrun. You gave Mr. Schonbrun the telephone numbers of three different women. Mr. Schonbrun later reported to you the results of the dates he had with these three women. You also showed Mr. Schonbrun another woman’s business card and identification photo to see if Mr. Schonbrun would be interested in dating her.

When Mr. Schonbrun appeared before you in court, you failed to disqualify yourself or to disclose your relationship with Mr. Schonbrun. Your conduct violated the Code of Judicial Ethics, canons 1, 2A and 3E.

COUNT FIVE

In your response dated October 3, 2003 to the commission's preliminary investigation letter dated August 19, 2003, you stated, "No Supervising Judge has ever spoken to me, counseled, criticized or reprimanded me concerning any of my conduct or behavior towards any person."

In fact, on December 24, 2002, Judge C.H. Rehm, Jr., Assistant Supervising Judge of the Criminal Courts, counseled you after concerns were raised regarding your interactions with young, female attorneys. Judge Rehm discussed with you the likely cultural differences between the newer attorneys then appearing before you and the more seasoned practitioners involved in your previous assignment to civil trials in Van Nuys; the likelihood of different generational and professional perspectives between you and female attorneys in their twenties; the advisability of always having others present when interacting with these young women; and the aspersions that might be cast upon a too personal, individual focus, no matter how innocent. You stated that you appreciated the information and would not repeat such behavior.

On April 24, 2003, the following judges met with you: Presiding Judge Robert A. Dukes, Assistant Presiding Judge William McLaughlin, Judge Dan Oki, the Supervising Judge of the Criminal Courts and Judge C.H. Rehm, Jr., the Assistant Supervising Judge of the Criminal Courts. At this meeting, you were advised of recent complaints that you had persistently asked female attorneys to lunch, and about an incident in which you made comments about a court employee's body. These incidents are the bases of the charges in count two (A, B and G) of this Notice of Formal Proceedings. You were also advised that effective April 30, 2003, you would be transferred to the South Gate Superior Courthouse where you would handle limited jurisdiction matters.

Your statement to the commission asserting that you had never been spoken to or counseled by a supervising judge for your conduct was false and misleading. Your conduct violated the Code of Judicial Ethics, canons 1 and 2A.

If true as described, your actions may constitute misconduct within the meaning of California Constitution, article VI, section 18(d).

YOU ARE HEREBY GIVEN NOTICE, pursuant to Rules of the Commission on Judicial Performance, rule 118, that formal proceedings have been instituted and shall proceed in accordance with Rules of the Commission on Judicial Performance, rules 101-138.

Pursuant to Rules of the Commission on Judicial Performance, rules 104(c) and 119, you must file a written answer to the charges against you within twenty (20) days after service of this notice upon you. The answer shall be filed with the Commission on Judicial Performance, 455 Golden Gate Avenue, Suite 14400, San Francisco, California 94102-3660. The answer shall be verified and shall conform in style to subdivision (b) of rule 14 of the California Rules of Court. The Notice of Formal Proceedings and answer shall constitute the pleadings. No further pleadings shall be filed and no motion or demurrer shall be filed against any of the pleadings.

This Notice of Formal Proceedings may be amended pursuant to Rules of the Commission on Judicial Performance, rule 128(a).

BY ORDER OF THE COMMISSION ON JUDICIAL PERFORMANCE

DATED: 2/4/04

/s/
RISE JONES PICHON
CHAIRPERSON